



MASSACHUSETTS DEPARTMENT OF REVENUE

PERSONAL INCOME TAX

NONRESIDENT EMPLOYED ON FISHING VESSEL, NONRESIDENT SEAMAN,
EMPLOYED IN FOREIGN OR COASTWISE TRADE ETC. WITHHOLDING

D O R D I R E C T I V E

**DOR-D
89-21**

FACTS:

Ethel, who is not a resident of Massachusetts, works on a fishing vessel based in Rhode Island but engaged in fishing in the waters of several states including Massachusetts. Ethel determines that she has worked within Massachusetts 50 days during the year and earned \$12,000 during the year from fishing in Massachusetts waters; however, when Ethel receives her W-2 Form for the preceding year in January, it shows that no amount was withheld from her wages for state tax purposes.

ISSUE:

Does Ethel, a nonresident working on a fishing vessel, owe income taxes to Massachusetts despite the fact that no amounts for those taxes were withheld from her wages?

DISCUSSION: Withholding/Liability for Tax.

Under 46 U.S.C. § 11108, "[w]ages accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a State or any political subdivision of a State." *Id.* This provision was intended to prevent multiple withholding from wages of seamen who might be in ports of different states when they receive pay. *Streckfus Steamers, Inc. v. Saint Louis*, 472 S.W.2d 660 (Mo. App.) cert. denied 409 U.S. 841 (1971). The provision does not, however, prevent Massachusetts from lawfully imposing taxes on income earned by nonresidents within the boundaries of Massachusetts. See *Shaffer v. Carter*, 252 U.S. 27 (1920).

Massachusetts taxes nonresidents only on income derived from, or effectively connected with:

- (1) any trade or business carried on in Massachusetts;
- (2) employment carried on in Massachusetts;
- (3) participation in any lottery or wagering in Massachusetts; and
- (4) ownership of any interest in real or tangible property located in Massachusetts.

A nonresident generally does not have a trade, business or employment in Massachusetts if his or her presence for business in Massachusetts is casual, isolated and inconsequential; it will be considered so if one of the following three tests is met:

- (1) the nonresident is in Massachusetts for 10 days or fewer during the taxable year; this test **cannot** apply, however, if the nonresident earns more than \$6,000;
- (2) the nonresident earns \$6,000 or less; or
- (3) the nonresident's presence for business in Massachusetts is ancillary to the nonresident's primary business or employment duties performed outside of Massachusetts.